

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

CAROLYN FARRELL
93 Turkey Hill Road
Newburgport, MA 01950

Plaintiff,

v.

ELI LILLY AND COMPANY
Lilly Corporation Center
Indianapolis, IN 46285

and

ABBOTT LABORATORIES, INC.
100 Abbott Park Road
Abbott Park, IL 60064
w/s/o CT CORPORATION
1025 Vermont Avenue, N.W.
Washington, D.C. 20005

and

BRISTOL-MYERS SQUIBB COMPANY
a successor of E.R. SQUIBB & SONS, INC.
P.O. Box 4500
Princeton, NJ 08543
w/s/o CT CORPORATION
1025 Vermont Avenue, N.W.
Washington, D.C. 20005

and

MERCK & COMPANY, INC.
601 Pennsylvania Avenue
North Building, Suite 1200
Washington, DC 20004

and

CIVIL ACTION No. _____

PHARMACIA and UPJOHN COMPANY
(aka THE UPJOHN COMPANY)
100 Route 206 North
Peapack, NJ 07977

w/s/o CT CORPORATION
1025 Vermont Avenue, N.W.
Washington, D.C. 20005

and

DART INDUSTRIES, INC., a successor to
REXALL DRUG COMPANY, INC.
14901 South Orange Blossom Trail
Orlando, FL 32837

and

GLAXOSMITHKLINE, INC.,
A successor to S.E. Massengill and
Burroughs-Wellcome
1500 K Street, NW
Washington, DC 20036

and

LANNETT COMPANY, INC.
A Pennsylvania Corporation,
C/o Samuel Gratz, CEO
9000 State Road
Philadelphia, PA 19136

and

MALLINCKRODT, INC.,
a Delaware Corporation,
675 McDonnell Boulevard
St. Louis, MO 63042

and

PREMO PHARMACEUTICAL
LABORATORIES, INC.,
a New Jersey Corporation,
w/s/o Corporation Trust Company
820 Bear Tavern Road
West Trenton, NJ 08628

and

CARNRICK LABORATORIES, INC.,
65 Horse Hill Road
Cedar Knolls, NJ 07927

and

MCNEIL LABS, INC.,
Camp Hill Road
Ft. Washington, PA 19034

and

PERSON & COVEY, INC.
616 Allen Avenue
Glendale, CA 91221

and

STANLABS, a successor to STANLEY DRUG
PRODUCTS, INC.
c/o CT Corporation
800 Pacific Building
Portland, OR

and

WEST-WARD, INC.
n/k/a Industrial Way Liquidation Corp.
c/o Henry Simon, Esq., Registered Agent
10 New King Street
White Plains, NY 10604

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §1446, defendant Eli Lilly and Company (“Lilly”) files this Notice of Removal and states:

1. On December 1, 2003, Plaintiff Carolyn Farrell commenced an action against Defendants in the Superior Court for the District of Columbia, Civil Division, as Civil Action No. 03-0009532 (the “Superior Court action”), by filing a Complaint for Damages. The United States District Court for the District of Columbia is the district embracing the place where this action is pending. True copies of all process, pleadings and orders on file in the state action as of the morning of December 29, 2003 are attached hereto as Exhibit A and specifically incorporated herein. Copies of the answers of co-Defendants Bristol-Myers Squibb Company, Pharmacia and

Upjohn Company, GlaxoSmithKline, Inc., Lannett Company, Inc., Mallinckrodt, Inc., and Premo Pharmaceutical Laboratories, Inc. are attached as Exhibit B.

2. Defendant Eli Lilly and Company received service of process on December 5, 2003. Upon information and belief, Defendant Abbott Laboratories, Inc. received service of process on December 5, 2003. Upon information and belief, Defendant Bristol-Myers Squibb Company received service of process on December 8, 2003. Upon information and belief, Defendant Merck & Company, Inc. received service of process on December 11, 2003. Upon information and belief Pharmacia and Upjohn Company received service of process on December 5, 2003. Upon information and belief, Defendant Dart Industries, Inc. has not received service. Upon information and belief, Defendant GlaxoSmithKline (successor to S.E. Massengill and Burroughs-Wellcome) received service of process on December 8, 2003. Upon information and belief, Defendant Lannett Company, Inc. received service of process on December 5, 2003. Upon information and belief, Defendant Mallinckrodt received service of process on December 8, 2003. Upon information and belief, Defendant Premo Pharmaceutical Laboratories, Inc. received service of process on December 5, 2003. Upon information and belief, Defendant Carnrick Laboratories, Inc. has not received service. Upon information and belief, Defendant Ortho-McNeil Pharmaceutical, Inc. (successor to McNeillab) received service of process on December 9, 2003. Upon information and belief, Defendant Person and Covey, Inc. has not received service. Upon information and belief, Defendant Stanlabs (successor to Stanley Drug Products, Inc.) has not received service. Upon information and belief, Defendant West-Ward, Inc. has not received service.

3. This Notice of Removal is filed within thirty (30) days of the first date in which any defendant to this action was served with a summons and copy of the Complaint.

Consequently, this notice is timely under 28 U.S.C. §1446(b).

4. Based on the information contained in the Complaint, plaintiff Carolyn Farrell was at the time of the commencement of this action and is at the time of filing this Notice of Removal a resident of the State of Massachusetts.

5. Defendant Eli Lilly and Company was at the time of the commencement of this action and is now at the time of filing this Notice of Removal an Indiana corporation with its principal place of business in the State of Indiana.

6. Upon information and belief, Defendant Abbott Laboratories, Inc. was at the time of the commencement of this action and is now at the time of filing this Notice of Removal an Illinois corporation with its principal place of business in the State of Illinois.

7. Upon information and belief, Defendant Bristol-Myers Squibb Company was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a Delaware corporation with its principal place of business in the State of New York.

8. Upon information and belief, Defendant Merck and Company, Inc. was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a New Jersey corporation with its principal place of business in the State of New Jersey.

9. Upon information and belief, Defendant Pharmacia and Upjohn Company was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a Delaware corporation with its principal place of business in the State of Florida.

10. Upon information and belief, Defendant Dart Industries, Inc. was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a Delaware corporation with its principal place of business in the State of Florida.

11. Upon information and belief, Defendant GlaxosmithKline, sued herein as GlaxoSmithKline, Inc., successor to S.E. Massengill and Burroughs-Wellcome, was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a Pennsylvania corporation with a principal place of business in the State of Pennsylvania.

12. Upon information and belief, Defendant Lannett Company, Inc. was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a Pennsylvania corporation with its principal place of business in the State of Pennsylvania.

13. Upon information and belief, Defendant Mallinckrodt, Inc., was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a Delaware corporation with its principal place of business in Missouri.

14. Upon information and belief, Defendant Premo Pharmaceutical Laboratories, Inc., was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a New Jersey corporation with its principal place of business in the State of New Jersey.

15. Upon information and belief, Defendant Elan Pharmaceuticals, Inc., sued herein as Carnrick Laboratories, Inc., was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a Delaware corporation with its principal place of business in the State of California.

16. Upon information and belief, Defendant Ortho-McNeil Pharmaceutical, Inc., sued herein as McNeil Labs, Inc., was at the time of the commencement of this action and is now at

the time of filing this Notice of Removal a Delaware corporation with its principal place of business in the State of New Jersey.

17. Upon information and belief, Defendant Person & Covey, Inc., was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a corporation of a state other than Massachusetts or the District of Columbia, and does not have its principal place of business in Massachusetts.

18. Upon information and belief, Defendant Stanlabs was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a corporation of a state other than Massachusetts or the District of Columbia, and does not have its principal place of business in Massachusetts.

19. Upon information and belief, Defendant West-Ward, Inc. was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a corporation of a state other than Massachusetts or the District of Columbia, and does not have its principal place of business in Massachusetts.

20. The plaintiff claims damages in excess of \$75,000. Accordingly, the matter in controversy in the state action exceeds the sum or value of \$75,000, exclusive of interest and costs.

21. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332, and the action is one that may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441(b) because it is a civil action between citizens of different states in which the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

22. Removal of this case on the basis of diversity of citizenship is not precluded by the provisions of 28 U.S.C. § 1441(b) because no Defendant is a citizen of the District of Columbia.

23. All Defendants who have been served with process consent to the removal of this action. Copies of consent forms for each such defendant are attached as Exhibit C.

Respectfully submitted,

ELI LILLY AND COMPANY

/s/ L. H. Martin

Lawrence H. Martin, D.C. Bar No. 476639
Foley Hoag LLP
1875 K Street, NW, Suite 800
Washington, D.C. 20006-1238
(202) 223-1200

and

James J. Dillon,
Foley Hoag LLP
155 Seaport Boulevard
World Trade Center West
Boston, MA 02210-2600
(617) 832-1000

Dated: January 5, 2004

CERTIFICATE OF SERVICE

I certify that on January 5, 2004, a true copy of the foregoing Notice of Removal was served by U.S. First Class Mail, postage prepaid, upon:

Aaron M. Levine, Esq.
Aaron M. Levine & Associates, P.A.
1320 Nineteenth Street, N.W.
Suite 500
Washington, DC 20036
Attorney for Plaintiff

Jennifer Gardner Levy, Esq.
Kirkland & Ellis, LLP
655 Fifteenth Street, N.W.
Suite 1200
Washington, DC 20005-5793
Attorney for Abbott Laboratories, Inc.

Sydney G. Leech, Esq.
Goodell, DeVries, Leech & Dann, LLP
One South Street, 20th Floor
Baltimore, MD 21202
Attorney for Bristol-Myers Squibb Company and Pharmacia and Upjohn Company

Michael McManus, Esq.
Elizabeth Ewert, Esq.
Drinker Biddle & Reath
1500 K Street, N.W., Suite 1100
Washington, DC 20005-1209
Attorneys for Merck & Company and Ortho-McNeil Laboratories

John Anderson, Esq.
Troutman Sanders LLP
1660 International Drive
Suite 600, Tysons Center
McLean, VA 22102
Attorney for Dart Industries, Inc.

Daniel Whitney, Esq.
Janet Coleman, Esq.
Whitney & Bogris LLP
401 Washington Avenue

Towson, MD 21204
Attorneys for GlaxoSmithKline

J. Paul Mullen, Esq.
Kathleen M. Bustraan, Esq.
Lord & Whip, P.A.
Charles Center South
36 South Charles Street, 10th Floor
Baltimore, MD 21201
Attorneys for Lannett Company, Inc.

Roberta Koss, Esq.
Scott Christensen, Esq.
Hughes, Hubbard & Reed LLP
1775 I St., N.W.
Washington, DC 20006
Attorneys for Mallinckrodt

Aaron Handleman, Esq.
Juli Simonyi, Esq.
Eccleston and Wolf, P.C.
2001 S Street, N.W., Suite 310
Washington, D.C. 20009
Attorneys for Premo Pharmaceutical Laboratories, Inc.

Christopher Garvey, Esq.
Melanie H. Muhlstock, Esq.
Goodwin Proctor LLP
599 Lexington Avenue
New York, New York 10022
Of Counsel for Premo Pharmaceutical Laboratories Inc.

Abbie Eliasberg Fuchs, Esq.
Harris Beach LLP
805 Third Avenue
New York, NY 10022
Attorney for Elan Pharmaceuticals (successor to Carnrick Laboratories, Inc.)

Person and Covey, Inc.
616 Allen Avenue
Glendale, CA 91221

Stanlabs, a successor to Stanley Drug
Products, Inc.
c/o CT Corporation
800 Pacific Building

Portland, OR

David Durbin, Esq.
Jordan Coyne & Savits LLP
1100 Connecticut Ave, N.W.
Suite 600
Washington, DC 20036
Attorney for West-Ward, Inc.

/s/ L. H. Martin

Lawrence H. Martin